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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,731	07/16/2003	Wesley M. Mays	125426-1079	9032
7590 04/14/2009				
KENNETH R. GLASER MICHAEL E. MARTIN GARDERE WYNNE SEWELL LLP 1601 ELM STREET, SUITE 3000 DALLAS, TX 75201				
EXAMINER				
JOHNSON, BLAIR M				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
04/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/620,731

Applicant(s)

MAYS, WESLEY M.

Examiner

Blair M. Johnson

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44, 46-48, 50, 51, 53-55, 57 and 58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44, 46-48, 50, 51, 53-55, 57 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/31/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44,46-48,50,51,53-55,57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgibbon et al in view of Chin.

Fitzgibbon et al discloses a conventional garage door and operating system comprising a control unit which responds to both a button control 19 and a radio frequency remote control 24 having push buttons. What is not shown in the automatic remote operating system where a remote control unit continually communicates with the control unit of the door opener to facilitate automatic opening and closing of the door. However, Chin does provide this teaching in an automatic door locking/unlocking device. Chin provides a remote control unit (Fig. 2) that has a transmitter 24 and a receiver 25. He also provides a stationary, "base" unit (Fig. 1) that also has a transmitter 14 and a receiver 15, each combined with a device to be activated by the system, in this case a vehicle door lock. Specifically, base transmitter 14 continuously transmits a pilot signal, searching for the remote control unit. When the remote control unit comes into range of the pilot signal of the base unit, it receives the signal via receiver 25 and then transmits a return acknowledgement signal via transmitter 24 to base receiver 15 to

unlock the door. When the remote unit goes out of range of the base transmitter, the door is returned to the locked state (column 4, line 64-column 5 line 18). Although there is a timer that will activate the lock even when the key is still within range of the lock (so as to lock the door when the key is close to the key, for safety reasons), this timer may be set to any desired length of time. The purpose of the Chin device is to render locking and unlocking the door automatic and thus, easier, as well as to provide automatic locking in the event the operator forgets to lock the door. This art and teaching is clearly applicable to the garage door art in that garage doors, such as disclosed by Fitzgibbon et al, are remotely operated and would benefit from such automated operation. Consequently, it would have been obvious to modify Fitzgibbon et al whereby his push button remote control system includes such an automated system so as to close the door, thereby rendering moot not remembering to close the door as well as to obviate searching, reaching for, the remote to open the door, etc. The aforementioned timer may be set to exceed the normal length of time for the remote control(s) to leave transmission range with the controller. Furthermore, it is noted that the timer is an additional feature in Chin, the use of which with the Fitzgibbon et al device is not necessary and may clearly be omitted.

As supported by the KSR decision, at the time of the invention, one of ordinary skill in the art would have good reason to pursue the known options within his or her technical grasp. Such a combination and modification, to one of ordinary skill in the art, would have a reasonable expectation of success, and would be based on ordinary skill and common sense at the time the invention was made. Also, known work in one field

of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. In the present situation, Chin has clearly anticipated the presently disclosed concept of providing a remote unit and a base unit, each with a transmitter and a receiver, for the purpose of constantly communicating so as to provide automatic operation of the controller. While the specific programming of the present device may vary from that of Chin, such is well within the purview of one of ordinary skill in the art for the reasons cited by KSR.

The use of more than one remote control device, each of which having it's own frequency, thereby enabling the situation recited in claim 50,57,58, et al so as to open or close only one specific door, for each respective vehicle, is considered to be well established in the garage door opener art.

Regarding claims 46,47 and 49, the "ceasing transmission" step (claims 46,47) and "maintaining" step (claim 49) are met by an operator turning off the system. Regarding claim 53, the "additional signal" is met by turning off the base unit and "causing said base transmitter to continue to send a periodic signal..." is met by turning the base unit back on.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Applicant's argument that Chin utilizes timers and repeated locking and unlocking when the remote is still in range is noted. However, the claims do not avoid this

additional feature. In other words, Chin still meets the limitations while providing this additional feature or operation. Regarding the alleged nonanalogous nature of Fitzgibbon et al and Chin, these two references are clearly analogous since they deal with the same technology involving remote operators and controllers. Limiting potential prior art to only remotely controlled garage door openers is unduly narrow. A similar view may be taken regarding the physical incorporation of these references on page 14 of 18.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (571) 272-6830. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blair M. Johnson/
Primary Examiner, Art Unit 3634

BMJ
4/12/09